

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: December 22, 2004.

Michael S. HacsKaylo,
Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-7861-8]

California State Motor Vehicle Pollution Control Standards; Amendments to the California Zero Emission Vehicle (ZEV) Regulation; 2003-2006 Model Years Within the Scope Request; 2007 and Subsequent Model Years Waiver Request; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted four sets of amendments to the California ZEV regulation. By letter dated September 23, 2004, CARB requested that EPA confirm that its aggregated amendments from the four rulemakings as they affect model years 2003-2006 are within the scope of previous waivers of preemption issued by EPA. CARB also requests that EPA issue a new waiver of preemption for the aggregated amendments to the extent they are applicable to the 2007 and subsequent model years. This notice announces that EPA has tentatively scheduled a public hearing concerning California's requests and that EPA is accepting written comment on the requests.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's requests on February 17, 2005, beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by February 7, 2005, expressing its interest in presenting oral testimony. By February 14, 2005, any person who plans to attend the hearing should call David Dickinson at (202) 343-9256 to learn if a hearing will be held. If EPA does not receive a request for a public hearing, then EPA will not hold a

hearing, and instead consider CARB's requests based on written submissions to the docket. Any party may submit written comments by March 29, 2005.

ADDRESSES: EPA will make available for public inspection at the Air and Radiation Docket and Information Center materials submitted by CARB, written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1743. The reference number for this docket is OAR-2004-0437. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St, NW., Washington, DC 20005.

OBTAINING ELECTRONIC COPIES OF DOCUMENTS: EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) home page (<http://www.epa.gov/otaq/>). Users can find this document by accessing the OTAQ home page and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: (<http://www.epa.gov/docs/fedrgstr/EPA-AIR/>).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at: U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6405J), Washington, DC 20460. Telephone: (202) 343-9256.

Docket: An electronic version of the public docket is available through EPA's electronic public docket and comment system. You may use EPA dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the

index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Once in the edocket system, select "search," then key in the appropriate docket ID number.

FOR FURTHER INFORMATION CONTACT:

David Dickinson, Certification and Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. Telephone: (202) 343-9256, Fax: (202) 343-2804, e-mail address: Dickinson.David@EPA.GOV.

SUPPLEMENTARY INFORMATION:

(A) Procedural History

Within CARB's 1990-1991 California Low-Emission Vehicle (LEV I) rulemaking 10 percent of the passenger cars and LDTs¹ marketed by all but small volume manufacturers were required to be ZEVs starting in the 2003 model year. The ZEV program at that time also included a provision requiring that, beginning in model year 1998, 2 percent of all passenger cars and LDTs offered for sale by manufacturers in any model year must be ZEVs, this percentage increased to 5 percent in model year 2001. EPA issued a waiver of preemption for the LEV I regulations, including the ZEV provisions, in 1993. The ZEV program requirements were eliminated for model years 1998-2002 by CARB regulation in 1996, and EPA, in 2001, confirmed that the deletion of the model year 1998-2002 ZEV requirements was within the scope of previous waivers. In 1998-1999 CARB, as part of its LEV II rulemaking, adopted certain ZEV amendments ("1999 Amendments") which set forth options for manufacturers to meet the 10 percent ZEV obligation in 2003 and beyond. EPA has not yet considered the 1999 amendments in a waiver context and to the extent they are still applicable (remain in effect after both the 2001 and 2003 ZEV amendments) EPA now considers them by today's action.

In 2001-2002 CARB adopted amendments that maintained certain provisions of the ZEV program for 2003 and subsequent model years and also included additional ZEV credit provisions ("2001 Amendments"). Although CARB initially requested that

¹ Under CARB's regulations, and LDT1 is a light-duty truck having a loaded vehicle weight of 0-3750 pounds.

EPA confirm that these amendments were within the scope of previous waivers of preemption, CARB subsequently withdrew its request. By today's action EPA is considering portions of the 2001 amendments that were not eliminated by CARB's 2003 ZEV amendments. CARB's 2003 ZEV amendments delay the start of the percentage ZEV requirements from model year 2003 to model year 2005 and make other changes; these amendments are also considered by today's action. In addition, CARB's 2002 amendments regarding conductive chargers on 2006 and subsequent model year battery electric vehicles are considered by today's action. Please see CARB's waiver request letter for a complete description of the four sets of ZEV amendments and a document setting forth the text of the aggregated amendments to title 13, California Code of Regulations (CCR) covered by CARB's request compared to the preexisting regulatory text. The docket also includes the "California Exhaust Emission Standards and Test Procedures for 2005 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes," which was adopted by CARB on August 5, 1999, and last amended December 19, 2003, and which is incorporated by reference in the ZEV regulation.

(B) Background and Discussion

Section 209(a) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7543(a), provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emission from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. California is the only state that is qualified to seek and receive a

waiver under section 209(b). The Administrator must grant a waiver unless he finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

When EPA receives new waiver requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within the scope waiver requests from CARB, EPA usually publishes a decision in the **Federal Register** and concurrently invites public comment if an interested part is opposed to EPA's decision.

Although CARB has submitted a within the scope waiver request for its ZEV amendments as applied to the 2003–2006 model years, EPA invites comment on the following issues: (1) Whether California's ZEV program amendments for the 2003–2006 model years and the ZEV program amendments for 2007 and subsequent model years should be considered together or separately; (2) whether California's 2003–2006 ZEV program amendments, within the context of a within the scope analysis (a) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 202(a) of the Act, and (c) raise new issues affecting EPA's previous waiver determinations. Please also provide comment that if CARB's 2003–2006 ZEV program amendments were not found to be within the scope of previous waivers and instead required a full waiver analysis, whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

EPA also invites comment on CARB's 2007 and subsequent model year ZEV program amendments, and whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and

welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 29, 2005. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that he deems pertinent. All information will be available for inspection at EPA Air Docket. (Docket No. OAR–2004–0437).

EPA requests that parties wishing to submit comments specify which issue, noted above, they are addressing. Commenters may submit one document which addresses several issues but they should separate, to the extent possible, those comments that relate to the 2003–2006 ZEV program amendments and those that relate to the 2007 and subsequent model year ZEV program amendments.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not